

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Monte Myiharell Barker,)	Civil Action No.: 5:12-374-MGL
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
Joey Norris, Joyce W. Brunson,)	
)	
Defendants.)	
)	

Plaintiff Monte Myiharell Barker is an inmate in custody at the Florence County Detention Center in Effingham, South Carolina. On February 9, 2012, Plaintiff proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pretrial handling.

On December 18, 2012, Plaintiff filed a “Motion to Dismiss” because he was unable to obtain the “proper proof” to challenge the Defendants’ Motion to Dismiss. (ECF No. 58.) The Defendants did not file a response to the motion. Thus, Magistrate Judge West recommended that Plaintiff’s motion be granted and this action be dismissed without prejudice. (ECF No. 59.)

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. Neither party

filed objections to the Report and Recommendation.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is DISMISSED without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
February 28, 2013